



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1991

Mr. G. Michael Gruber
Jackson & Walker
901 Main Street, Suite 6000
Dallas, Texas 75202-3797

OR91-612

Dear Mr. Gruber:

In August this office issued an open records ruling stating that the Texas High-Speed Rail Authority could withhold certain attorney fee bills under the litigation exception in the Open Records Act, article 6252-17a, § 3(a)(3), V.T.C.S. OR91-369. On September 13, 1991, this office notified you that we were reopening the file on OR91-369 in order to consider issues raised in a brief we received after the draft on OR91-369 had been prepared. The reopened file was assigned I.D. No. 13287.

The first issue raised in the brief, which was submitted by an attorney who submitted the request for information to the authority, is whether the information even relates to the litigation you cited. The specific request for information was for copies of "all documents . . . showing the billing to the Authority by the Jackson & Walker law firm and by Larry Montgomery . . . [including] any documents showing the number of hours spent for each day billed, a description of the activity on a daily basis, the name of the individual billing for each activity, and any expenses incurred." The Energy Division of this office has informed us that the same information was the subject of a request for production at a deposition taken in connection with the litigation cited. (The information was not produced.) We must conclude, therefore, that the information is related to the litigation.

The second issue is "whether the Attorney General, rather than the private attorney for the requestor, must make an independent determination that the information should be withheld from public disclosure since the requestor is a state agency rather than a political subdivision." The assistant attorney general who represents the authority has informed us that he has determined that the

information should be withheld because of the pending litigation. Therefore, we need not consider the specific issue raised by the brief.

The third issue is "whether the information is of such a clearly public nature that it would not be covered by the exception under the standards set out in ORD No. 551 (1990)." Open Records Decision No. 551 concluded that city ordinances were of such a clearly public nature that they could not be withheld from the public on the basis of exceptions to the Open Records Act. The statement reflects a recognition that due process requires that people have notice of the law. Detailed attorney fee bills raise no such concerns and, indeed, may sometimes be withheld under section 3(a)(7) of the Open Records Act. See Open Records Decision No. 589 (1991).

Finally, the brief suggests that Open Records Decision No. 551 is incorrect. That decision, however, is not under reconsideration.

In conclusion, then, the authority may rely on OR91-369 as a basis for withholding the requested information. If you have questions about this ruling, please refer to OR91-612.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/lcd

Ref.: ID# 13287

cc: Mr. C. Robert Heath
Attorney
Bickerstaff, Heath & Smiley
San Jacinto Center, Suite 1800
98 San Jacinto Boulevard
Austin, Texas 78701-4039